

REMARKS

Please reconsider the application in view of the following remarks. Applicant thanks the Examiner for carefully considering this application and for indicating that claims 11-16, 18-25, and 31 contain allowable subject matter.

Disposition of Claims

Claims 1-34 are pending in this application. Claims 1 and 32 are independent. The remaining claims depend, directly or indirectly, from claims 1 and 32.

Rejection(s) under 35 U.S.C. § 102

Claims 1-3 and 32 are rejected under 35 U.S.C. § 102(a) as being anticipated by US Patent No. 6,885,801 ("Shankar"). This rejection is respectfully traversed.

In the Office Action, the Examiner states that "the Examiner was unable to ascertain the exact date of reduction. The only activity recorded before December 6, 2001 was image acquisition. However, for an actual reduction to practice, the invention must have been sufficiently tested to demonstrate that it will work for its intended purpose." (Office Action, p. 2, last paragraph.).

It seems that the Examiner believes demonstration of reduction to practice prior to December 6, 2001, the effective date of the Shankar reference, is necessary to overcome the Shankar reference. However, that is not the only way to antedate a reference under 37 C.F.R. § 1.131.

Specifically, 37 C.F.R. § 1.131(b) provides,

“The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.” (emphasis added).

Thus, to antedate a prior art reference, Applicants can also show earlier conception coupled with diligence until the filing of the application.

In the Office Action, the Examiner acknowledges that “[s]ince the date for reduction to practice is the filing date of the application, the evidence submitted establishing diligence is sufficient.” (Office Action, p. 3, lines 1-2). In addition, in the Advisory Action mailed June 22, 2009, the Examiner acknowledged that “[t]he translated lab notes of declaration do show the conception of the invention was prior to filing date of Shankar.” (Advisory Action, p. 2, line 3).

Applicants thank the Examiner for carefully considering the 37 C.F.R. § 1.31 Declarations and for acknowledging both conception prior to the effective date of Shankar and due diligence from prior to the effective date of Shankar until the filing date of the present application.

In view of the above, Applicants submit that all requirements for antedating a reference, under 37 C.F.R. § 1.131, have been met, and, therefore, Shankar is not a valid prior art reference against the present application. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection(s) under 35 U.S.C. § 103

Claims 4-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shankar in view of NPL document “Hybrid Image Segmentation Using Watersheds and Fast Region Merging” (hereinafter “Harris”). Claims 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shankar in view of Harris, and further in view of US Patent No. 4,926,257 (“Miyazaki”). Claims 26-30 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shankar in view of US Patent No. 5,764,809 (“Nomami”). For the reasons set forth below, these rejections are respectfully traversed.

Each of the aforementioned §103 rejections are based on Shankar as the primary reference. As described above, Shankar is not a valid prior art reference against this application. Therefore, Shankar may not be used to support the aforementioned 35 U.S.C. § 103 rejections.

As the various secondary prior art references admittedly fail to teach all of the elements of the claims, as evidenced by the fact that they are cited solely to teach specific features recited in dependent claims, it is clear that the various secondary prior art references, whether considered alone or in combination, cannot render the claims of the present application obvious.

In view of the above, withdrawal of the aforementioned rejections with respect to the dependent claims is respectfully requested.

Conclusion

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 17452/005001).

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Respectfully submitted,

By _____


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